

**Letter of Findings: 01-20160136
Individual Income Tax
For the Year 2011**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document to the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual was unable to establish that he abandoned his Indiana domicile when he moved to Ethiopia under a temporary work visa. Individual maintained significant contacts with Indiana and is required to file a 2011 Indiana income tax return.

ISSUE

I. Individual Income Tax - Indiana Residency.

Authority: IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-3-1-3.5; IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-8.1-5-1; IC § 6-1.1-12-37(a)(2); Dep't of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); State Election Board v. Bayh, 521 N.E.2d 1313 (Ind. 1988); Croop v. Walton, 157 N.E. 275 (Ind. 1927); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 3.1-1-21](#); [45 IAC 3.1-1-22](#); [45 IAC 3.1-1-23](#).

Taxpayer argues that he was not an Indiana resident during 2011 and was not required to file an Indiana income tax return for that year.

STATEMENT OF FACTS

Taxpayer is a United States citizen currently living in Ethiopia. The Indiana Department of Revenue ("Department") issued a proposed assessment of Indiana income tax the Department determined Taxpayer owed for tax year 2011 based on the best information available to the Department. Taxpayer responded with a "Letter of Protest" stating that he was not a resident of Indiana during 2011 or any subsequent years.

An administrative phone hearing was held during which Taxpayer's representative explained the basis for Taxpayer's protest. This Letter of Findings results. Additional facts will be provided as necessary.

I. Individual Income Tax - Indiana Residency.

DISCUSSION

The issue is whether Taxpayer was domiciled in Indiana in 2011 and was therefore required to file an Indiana income tax return. The Department determined that Taxpayer was a resident of Indiana because Taxpayer had an Indiana driver's license, claimed the homestead deduction on his Indiana home and had a W-2, 1099 and 1098 which listed Taxpayer as an Indiana payee.

Taxpayer argued that he lived and worked in Ethiopia for all of 2011. Thus, Taxpayer states that he did not owe any Indiana income tax for 2011.

As a threshold issue, all tax assessments are prima facie evidence that the Department's claim for the tax is valid, and each taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly

developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dep't of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, shall be entitled to deference.

Indiana imposes a tax on "the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. For Indiana income tax purposes, the presumption is that taxpayers properly and correctly file their federal income tax returns as required pursuant to the Internal Revenue Code. Thus, to compute what is considered the taxpayer's Indiana income tax, the Indiana statute refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayer's taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

For income tax purposes, "The term 'resident' includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state" IC § 6-3-1-12; see also [45 IAC 3.1-1-21](#). A "nonresident" is "any person who is not a resident of Indiana." IC § 6-3-1-13. An individual who files a federal income tax return as a nonresident citizen "is considered as being domiciled in Indiana and his income taxable as a resident citizen, if he maintains a place of abode in Indiana immediately prior to residing in a foreign country as a nonresident citizen of the United States, and has not permanently established his domicile in a foreign country or in another state" [45 IAC 3.1-1-23](#)(3).

Domicile is defined by [45 IAC 3.1-1-22](#), which states:

For the purposes of this Act, **a person has only one domicile at a given time** even though that person maintains more than one residence at that time. **Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.**

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person's intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person's intent in every relocation. The determination must be made on the facts present in each individual case. Relevant facts in determining whether a new domicile has been established include, but are not limited to:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or complying with the homestead laws of a state
- (5) Receiving public assistance
- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile.

(Emphasis added).

Thus, a new domicile is not necessarily created when an individual moves to an address outside Indiana. Instead, the individual must move to the new non-Indiana address and have an intent to remain at that non-Indiana address.

For example, in *Croop v. Walton*, 157 N.E. 275 (Ind. 1927), a taxpayer who was domiciled in Michigan sold his home in Michigan and moved to a new residence in Indiana where he and his wife lived for several years for the benefit of his wife's health. The taxpayer lived in the Indiana home "on account of the mental and physical condition of his wife, and continued to occupy it until such time as he could safely return to [Michigan] to live." *Id.* at 276. The court concluded that, based on the level of activity he maintained in Michigan and lack of intention to abandon his domicile, taxpayer did not change his domicile from Michigan to Indiana. The court explained, in

relevant part, that:

"If [a] taxpayer has **two residences in different states**, he is **taxable at the place which was originally his domicile, provided the opening of the other home has not involved an abandonment of the original domicile and the acquisition of a new one.**"

'[D]omicile' . . . is the place with which a person has a settled connection for legal purposes, either because his home is there or because it is assigned to him by the law, and is **usually defined as that place where a man has his true, fixed, permanent home, habitation, and principal establishment, without any present intention of removing therefrom, and to which place he has, whenever he is absent, the intention of returning.**

Id. at 277. (Internal citations omitted) (**Emphasis added**).

In explaining the difference between "residence" and "domicile," the court in Croop stated:

'Domicile' "is a residence acquired as a final abode. To constitute it there must be (1) residence, actual or inchoate; (2) the nonexistence of any intention to make a domicile elsewhere." "The domicile of any person is, in general, the place which is in fact his permanent home, but is in some cases the place which, whether it be in fact his home or not, is determined to be his home by a rule of law."

"Residence is preserved by the act, domicile by the intention." "Domicile is not determined by residence alone, but upon a consideration of all the circumstances of the case." "While a person can have but one domicile at a time, he may have concurrently a residence in one place . . . and a domicile in another."

To effect a change of domicile, **there must be an abandonment of the first domicile** with an **intention not to return to it**, and there must be **a new domicile acquired by residence elsewhere** with an **intention of residing there permanently, or at least indefinitely.**

Id. at 277-78 (Internal citations omitted) (**Emphasis added**).

In *State Election Bd. v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court considered the issue of the meaning of "domicile" in determining that Mr. Bayh met the residency requirement for the office of Governor. Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. The court stated, in pertinent part:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and... he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. **A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact... [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile."**

A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence. *Yonkey v. State* (1866), 27 Ind. 236.

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." **Intent and conduct must converge to establish a new domicile.** Id. at 1317 - 18.

(**Emphasis added**).

In the instant case, Taxpayer indicates that he first moved to Indiana in 2004 but moved to Ethiopia in October of 2005 for work. Though Taxpayer's visa was temporary, he considered his move permanent as he was doing "government contract work" and "rolling from one job to another." While living and working in Ethiopia, Taxpayer met and married his wife in 2012 and started a family. Taxpayer and his wife purchased a home in Ethiopia in 2015 and own a business there. At the time of the hearing, Taxpayer was working on obtaining a permanent visa. Taxpayer has never renounced his United States citizenship and has no plans to do so.

Taxpayer maintains an Indiana driver's license for use when he visits his mother in Indiana and for travel abroad. Taxpayer did not own any vehicles in 2011. He registered to vote in Indiana in 2004 but never exercised that right and has not renewed his voter's registration since moving to Ethiopia. Taxpayer continues to use his mother's Indiana address for tax purposes as he has experienced difficulty getting mail overseas.

Taxpayer maintains a home in Indiana and claimed the homestead deduction on the home in 2011. As of the date of this decision, Taxpayer continues to claim the homestead deduction on his Indiana home. He does not rent out the home and did not do so in 2011.

Taxpayer did file Indiana income tax returns for 2010 and 2012. He claims that those filings were a mistake as "no tax was owing, [thus] tax returns should not have been filed" A review of Taxpayer's 2011 Federal income tax return reveals that Taxpayer lists his Indiana home as his address and did take the foreign earned income credit.

The Department is mindful that there is no one set of standards that will accurately indicate a person's intent in every relocation. However, given a "case by case" review of Taxpayer's facts, documents and circumstances, the Department is unable to agree that Taxpayer abandoned his Indiana domicile for tax year 2011. Taxpayer moved to Ethiopia for "government contract work" under a temporary visa. He married his wife, a native of Ethiopia, in 2012, the year after the tax year in question. Taxpayer and his wife purchased a home in Ethiopia in 2015 and own a business there. Taxpayer claims that he is currently working on obtaining a permanent visa. Despite his recent activity in Ethiopia, prior to moving there Taxpayer lived in Indiana, purchased a home here, obtained an Indiana driver's license and registered to vote in Indiana. Taxpayer took the homestead deduction on his Indiana home in 2011 and continues to do so. Under Indiana law, a "homestead" is a taxpayer's "principal place of residence" located in Indiana and owned by taxpayer. IC § 6-1.1-12-37(a)(2). By claiming a homestead deduction on his Indiana home, Taxpayer effectively certified that Indiana was his principal place of residency.

Any individual who was domiciled in Indiana during the taxable year is considered a resident of this State. IC § 6-3-1-12(a). "A change of domicile requires an actual moving with an intent to go to a given place and remain there. It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact. . . . **[T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile.**" Bayh, 521 N.E.2d at 1317 (**emphasis added**). To effect a change of domicile, **there must be an abandonment of the first domicile with an intention not to return to it**, and there must be **a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely**. Croop, 157 N.E. 275 at 278 (**emphasis added**). Given the totality of the circumstances in 2011, the Department is not able to agree that Taxpayer effectively and legally changed his domicile. Taxpayer was an Indiana resident for the tax year 2011 because his domicile remained in Indiana.

Residency cases are particularly fact sensitive, thus the position relayed within this document pertains only to this case and its specific set of facts.

FINDING

Taxpayer's protest is respectfully denied.

Posted: 10/26/2016 by Legislative Services Agency
An [html](#) version of this document.